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BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET NO. RR 999(AMENDMENT NO. 5)

RELEASED RATES OF MOTOR COMMON

CARRIERS OF HOUSEHOLD GOODS

DATED JANUARY 21, 2011

COMMENTS OF

JOSEPH M. HARRISON
TRANSPORTATION CONSULTANT

DATED FEBRUARY 3, 2011

INTRODUCTION

My name is Joseph M. Harrison. I am a transportation consultant, specializing in the household goods carrier transportation industry. For 26 years I was President of the American Moving and Storage Association and the Household Goods Carriers Bureau. My professional expertise is focused on the operations of interstate household goods carriers and their customer base, which among other disciplines includes tariff publication, liability and consumer protection regulations and requirements. Since the early 1980's I have been actively involved in nearly all Congressional legislation and federal government rulemakings and decisions that have specifically involved interstate household goods carriers and their customers, including every Released Rates Order proceeding and decision issued by the Interstate Commerce Commission (I.C.C.) and the Surface Transportation Board (STB). Therefore, I fully appreciate, understand and have a keen interest in the issues in this proceeding. These comments are being submitted to assist the STB in finalizing a fair and reasonable decision affecting both interstate movers and their individual shipper customers.

In my capacity as a consultant I have been helping movers, mostly small and newly certificated interstate movers, comply with the STB's tariff publication requirements, including ensuring they include in their tariffs the provisions of STB's Released Rates Order MC-999 (Amendments 4), (RR999), including valuation changes. In addition, I ensure they comply with all related transportation document requirements (e.g. bill of lading etc.) of the STB as well as the Federal Motor Carrier Safety Administration's (FMCSA) consumer protection requirements. Since I know that most of the STB's and FMCSA's decisions affecting interstate movers have as their predicate "educating and protecting consumers of moving services", my consulting advice emphasizes the importance of strict regulatory compliance that will not only avoid possible government enforcement problems but will result in satisfied customers and an enhanced professional reputation. Over the past several years I have worked with a number of smaller, regional-type movers, especially newly certificated movers, with some having little or no knowledge of their liability responsibility and as a result lack a basic understanding of their required responsibility vis-à-vis STB's Released Rates Order MC – 999 (Amendment 4) (RR999). Therefore, my comments are not submitted on behalf of a specific mover or group of movers but for the purpose of ensuring that ,in general, interstate movers, especially small and newly certificated movers, can reasonably comply with the STB's decision in this proceeding and that consumers of their services have a better understanding of a mover's liability and the economic effect of their decision to either select full value or 60 cents per lb. liability coverage should a claim for loss or damage be necessary.

VALUATION STATEMENT

Based on my years of experience with both movers and their customers, the STB decision to require specific language to be added to an existing carrier estimate form clearly strikes a reasonable balance between a mover's added paperwork burden and the need for their customers to have more knowledge concerning the required liability options offered by a mover and a more enhanced knowledge as to the resultant liability coverage. Therefore, given an appropriate time frame for compliance, the decision positively addresses the referenced Congressional directive in SAFETEA-LU.

RESETTING THE MINIMUM SHIPMENT AND PER POUND VALUES

Based on the long history of determining used household goods shipment values through I.C.C. and STB released rates decisions, as well as, the value data referenced in the January 21, 2011 decision, the value increase from $5000.00 to $6000.00 (minimum value) and $5.00 to $6.00 (times the weight of the shipment value) is reasonable and should be adopted. While I am not aware that a credible or reliable higher level of used household goods value exists, it would not be prudent to significantly increase these values beyond the levels approved by STB because it could result in a significantly higher overall risk level (liability level per shipment) for movers which would in turn likely require a similar significant increase in a individual mover's valuation charge assessed to the consumer to cover the increased risk. This could have the opposite effect sought by this decision by discouraging consumers from selecting the full value option because of its high cost.

EFFECTIVE DATE OF DECISION NOT REALISTIC

For reasons detailed below the April 1, 2011 effective date does not provide sufficient time for a mover, regardless of its size, to comply with the January 21,2011 decision. Also, due to the unique nature of the decision – allowing comments to be filed on or before March 15, 2011 regarding the $6.00, $6000.00 value levels – the actual time allowed for movers to comply is really only two weeks because until it is known that the value levels will actually be those detailed in the January 21, 2011 decision ,movers won't seriously begin to implement compliance efforts until after March 15,2011, assuming no further changes to these values are announced by the STB.

I am confident that the STB will receive comments from movers and/or groups of movers that will articulate the extensive effort necessary to ensure compliance; namely: education, training and the amendment of and printing of transportation documents (new estimate forms, bill of lading, etc.).

Based on my knowledge of the moving industry, van lines, each with hundreds of agents, will first be required to educate themselves and then all of their agents domiciled throughout the U.S. Agents will in turn be required to educate their employees, especially their sales force and drivers. In addition to mover personnel that deal with the initial phases of a move, each van line and agent employee who deals with loss or damage claims will also need to be educated and trained. Educating and training hundreds of employees located throughout the country cannot be effectively achieved in a little over two months, much less two weeks . Many other movers, while not operating an agent network, have multiple locations throughout the country and therefore, will also be required to expend the necessary time and expense to educate and train all of their sales and claim employees as well as drivers . Even single location movers must devote the necessary time to educate and train their sales force, drivers and claim personnel.

In addition to training and education, all movers, regardless of their size and make up, will be required to change their computer software as well as a number of transportation and claim documents. As indicated the document change is not confined to just the estimate form. The bill of lading, order for service, rights and responsibility booklet, claim forms and any other form or publication that contains reference to the amended values will be required to be changed. Finally every movers' tariff will be required to be amended.

The moving industry transports approximately 800,000 to one million interstate shipments each year. Many more estimates are provided than actual moves; therefore, it is obvious that tens of thousands of forms and publications will be required to be amended by the moving industry. These required changes will take a significant amount of time to accomplish. Yes, some general sense of what will be required will be known as a result of the January 21 decision; however, it will result only in some cursory education, movers will not begin to invest the time and expense required to ensure complete and accurate compliance until after March 15, 2011. Therefore, based on the aforementioned compliance tasks it is not remotely possible for the moving industry to be in compliance with the STB decision by April 1, 2011.

It is also important to stress that movers provide customers with move cost estimates 30, 60 even sometimes 90 days prior to an actual move date. Therefore, a number of customers who have actual move dates in May and June will receive move estimates in April and May. These customer estimates cannot reflect the requirements of this decision, given the existing time frame.

For many years, a number of ICC, STB and FMCSA decisions have acknowledged that the moving industry business cycle is seasonal in nature and that the industry's peak summer season is defined as starting May 15 and ending September 30, with approximately 50 percent of the industry's annual shipments transported during this period. Given this reality, movers begin to plan for the peak season many months prior to each peak season, which among other things includes strategic planning, education, training, employee recruitment, new and improved documents, as well as insuring compliance with any government – related required changes. Once the peak season begins there is no time and minimal resources available for any other efforts except meeting the service demands of its customers. Therefore, it would be an unreasonable burden to require movers to comply with this decision weeks before or during the peak season.

Given the unique nature of the moving industry and the demonstrated tasks associated with the STB's decision additional compliance time is required. Therefore, in order to provide a reasonable time frame for movers to comply with the January 21, 2011 decision and avoid "hit or miss" compliance, resulting in confusion among movers and consumers, as well as possible estimating, billing and claim errors, it is requested that the STB give consideration to extending the April 1, 2011 effective date to at least 60 days after the end of the 2011 peak moving season ---- November 30, 2011 or later.

OTHER PRO CONSUMER CLARIFICATIONS

As indicated, based on my own consulting experiences, there does not exist sufficient knowledge and understanding of the STB's RR999 requirements among some newly certificated movers and some small regional movers. Therefore, precise applicability language within STB's released rates order decision is important to ensure that all movers ,especially those referenced, fully understand their liability responsibilities vis-à-vis RR999 in order for their customers to receive the information they need to make intelligent decisions concerning the value of their shipments and the selection of liability coverage that is in their best interest. As a consequence, it is requested that the STB give consideration to including in the decision the following pro consumer clarifications:

RR999 (AMENDMENTS 4 AND 5) APPLY TO ALL MOVERS

A clear statement that not only do the requirements of RR999 Amendment 5 apply to all interstate household goods carriers transporting shipments on behalf of individual shippers (as defined in SAFETEA-LU) but that the requirements of RR999 (Amendment 4)issued December 21, 2001, April 22, 2002 and July 26, 2006 also apply to this segment of the moving industry in so far as those provisions not changed by Amendment 5 (e.g. approved valuation charge levels). It is my opinion that as result of sections 4207 and 4215 of SAFETEA-LU that Congress intended RR999 (Amendment 4) to apply to all household goods carriers; however, it appears that prior to enactment of SAFETA the STB's RR999 decisions were being interpreted to apply only to movers who participated in the Household Goods Carriers Bureau Committee's (Committee) tariffs. See the STB's RR999 (Amendment 4) decision issued April 22, 2002,wherein the STB stated "... we clarify that carriers that are not Committee members may use the approach that we authorized in the 2001 Decision". This pre 2005 regulatory environment may have contributed to the lack of understanding of liability responsibility by movers who were not members of the Committee. A clarification would be helpful.

EXCESSIVE VALUATION CHARGES

For the past few years I have been advising movers that the maximum reasonable FVP charges that they should publish in their tariff are those that approximate the FVP charges approved by the STB in its December 21, 2001 RR999 (Amendment 4) decision plus annual adjustments based on the BLS's Consumer Price Index – All Urban Consumers (CPI-U) as approved by the STB in its RR999 (Amendment 4) issued July 26, 2006. However, I am aware that a few small movers have endeavored to publish FVP charges significantly in excess of the levels approved by the STB to in effect circumvent the application of FVP coverage. As an example rather publishing a charge of say $120.00 for the minimum $5000.00 declared shipment value, the charge would be four times as much – e.g. $500.00. It is my opinion this level of charge is not only excessive and unreasonable but clearly designed to discourage consumer customers from selecting the FVP option and for all practical purposes forcing the customer to select the 60 cents per lb. option. I advise my mover clients that they must adhere to the STB's R999 (Amendment 4) requirements, including the tariff publication of FVP charges that are reasonable and not designed to discourage selection of the FVP option. In informal communications the STB has agreed with this advice; however, there is no formal STB declaration of this opinion. Consumers would benefit if the STB would include in its decision a statement that would make it clear that FVP charges cannot be included in a movers tariff that are unreasonable and would on their face discourage the selection of the FVP option.

BINDING ESTIMATES

In section 4205 (c) (iii) of SAFETEA-LU Congress wisely required movers to base their non-binding estimate shipment charges on actual weight. This was required because the weight of a shipment can be audited through use of certified weight scales, while other measures such as cubic feet, linear feet, etc. cannot be easily audited and therefore are prohibited.

On the other hand, a binding estimate can be based on any determination, traditional weight or otherwise. As a result a few movers continue to base charges on cubic feet and other difficult to audit measures by claiming the assessed charges are base on a binding estimate; thereby, lawfully avoiding use of the otherwise mandated actual weight method employed by the majority of movers. While some of these movers are indeed providing a proper and lawful "binding estimate" some are using the words "binding estimate" on their paperwork but are not truly providing a bonafide binding estimate. They are using the binding estimate description but not providing the customer an initial binding price; thereby, circumventing the requirement to use actual weights- the FMCSA is currently dealing with these issues vis-à-vis their enforcement activity . I am referencing the aforementioned because despite my opinion that the STB's RR999 (Amendment 4 and 5) applies to both non-binding and binding estimates, especially in view of sections 4207 and 4215 in SAFETEA-LU, it would be helpful if the STB would clarify in RR999 (Amendment 5) that its provisions apply to binding estimates as well as non-binding estimates to avoid possible future interpretation problems. Also, the STB should consider clarifying that under a binding estimate that if weight is not used as a basis for the binding estimate that the mover must either ensure the shipper declares the total value of the shipment or a reasonable estimated weight must be provided by the mover in order to determine the declared value of the shipment. Absent, the requested clarifications some movers may believe they can avoid the RR999 requirements through use of a binding estimates or will not know how to comply if weight is not used to determine charges under a lawful binding estimate.

FORM CONTENT

As a result of the decision it is assumed that the current liability option language required to be made part of a movers' bill of lading will no longer be required and should be removed in view of the language now being required to be made part of the estimate form. In addition to the required change to the bill of lading, a mover is required by the FMCSA to provide each consumer customer with Your Rights and Responsibilities When You Move publication that among other information contains required language explaining the liability options subject of this decision. The FMCSA language differs somewhat from the new STB language, including reference to the current values ($4.00 $5000.00). While language changes in the referenced publication are the purview of the FMCSA, it will likely take the FMCSA additional time subsequent to the effective date of the STB's decision to authorize any language changes they believe may be necessary in light of the STB decision. In the meantime the value levels referenced in the FMCSA publication, for a period of time, will differ from those required to be set forth on a mover's estimate form. It would be helpful if the STB in its decision would at a minimum indicate that movers may change any references to the values in the referenced publication until the FMCSA authorizes further changes in the liability language. This will eliminate consumer confusion that will result with different values referenced in the booklet than those required on the estimate form. The current FMCSA language will continue to reasonably describe the liability options until amendments are authorized by the FMCSA sometime in the future.

TARIFF PUBLICATION

Historically the Household Goods Carrier Committee published the RR liability provisions and valuation charges in its tariff on behalf of its approximate 2000 carrier (mover) participants and currently most of these same carrier participants continue to do so in their own individual tariffs. My recent experience indicates that there are some movers who currently do not include the RR999 provisions in their individual tariffs. I advise mover clients to include the STB provisions and valuation charges in their individual tariffs because in my opinion the regulations require movers to do so. Current regulations require movers to provide each of their customers the following notice:

TARIFF INSPECTION AND INCORPORATED NOTICE

> Federal law requires that movers advise shippers that they may inspect the tariffs that govern your shipment. Carrier's tariffs, by this reference, are made a part of the contact of carriage (bill of lading)between you and the carrier and may be inspected at carrier's facility, or, on request, carrier will furnish a copy of any tariff provision containing carrier's rates, rules or charges governing your shipment, the terms of which cannot be varied.
>
> Incorporated tariff provisions include but are not limited to those: (1) establishing limitations of carrier's liability, the principal features of which are described in the valuation declaration section of the order for service; (2) setting the time periods for filing claims, the principal features of which are described in Section 6 of the bill of lading; and , (3) reserving the carrier's right to assess additional charges for additional services performed and, on non-binding estimates, to base charges upon the exact weight of the goods transported.

While the referenced requirement seems obvious, it would be helpful if the STB would include a statement in its decision that would indicate that movers must include their valuation charges and STB RR999 (Amendment 4 and 5) provisions in their required tariff publication. This would ensure consumers the ability to easily review these provisions should they elect to inspect a movers tariff.

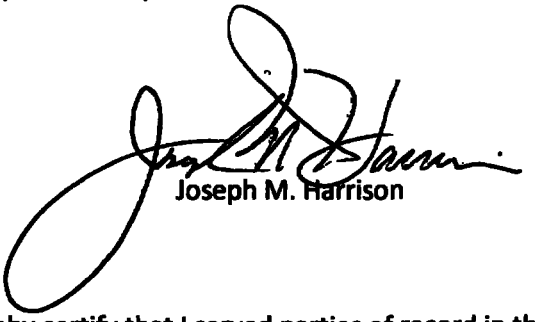
In closing, I have endeavored to provide reasons and justification for the requested clarifications that in some cases may seem unnecessary or overkill; however, since this instant decision will likely be the last STB RR999 decision to be issued for a number of years, it is important for the application of the decision to be as clear as possible for both compliance and enforcement purposes. This will in turn ensure that consumers receive and understand the liability information and protection Congress intended them to receive.

Thank you for the opportunity to submit these comments regarding this important proceeding.

Respectfully submitted,

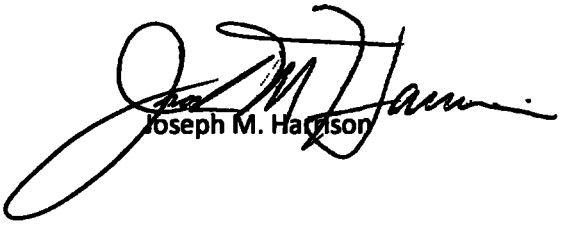
Joseph M. Harrison, President
Joe Harrison Consulting, Inc.

I, Joseph M. Harrison, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.



Joseph M. Harrison Date 2/3/11

I hereby certify that I served parties of record in this proceeding with this document by U.S. mail.



Joseph M. Harrison Date 2/3/11